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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/045,386	03/20/1998	JAY S. WALKER	WD2-97-557	9821
22927	7590	11/23/2004	EXAMINER	
WALKER DIGITAL FIVE HIGH RIDGE PARK STAMFORD, CT 06905			RUDY, ANDREW J	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 11/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/045,386	WALKER ET AL.
	Examiner	Art Unit
	Andrew Joseph Rudy	3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 September 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 11,14,25,26 and 33-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 26 and 34 is/are allowed.
- 6) Claim(s) 11,14,25,33 and 35-40 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

1. Applicant's September 9, 2004 Amended Appeal Brief has been received. Pursuant to the September 3, 2004 Office Action the previous rejection is partially withdrawn. Claims 11, 14, 25, 26 and 33-40 are pending.

Drawings

2. The drawings objection, per the July 1, 2002 Office Action, is withdrawn pursuant to the receipt of the February 18, 2004 Correction of the Drawings.

Specification

3. The disclosure is objected to because of the following informalities: The corrected drawing figures are not correlated in juxtaposition with the descriptive portion of the specification, e.g. Fig. 1, element 10A.

Appropriate correction is required.

Claim Rejections - 35 USC §101

4. Claims 11, 25, 33, 35, 37 and 39 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claims 11, 25, 33, 35, 37 and 39 only recite an abstract idea. The recited steps of measuring an activity rate or receiving an override signal does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of a user or by use of a pencil and paper. These steps only constitute an idea of measuring an activity rate or receiving an override signal. Intended use, e.g. for controlling, if, do not positively recite claim limitations and are given little, if any, patentable weight.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 11, 14, 35, 36 and 38-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11, lines 8-9, the phrase “successfully time consuming supplementary product offers correspond to successfully greater ranges of activity rates” is not clear. Also, support for such is not apparent from the descriptive portion of the specification, nor the drawing figures.

Claim 14, lines 12-13, the phrase “successfully time consuming supplementary product offers correspond to successfully greater ranges of activity rates” is not clear. Also, support for such is not apparent from the descriptive portion of the specification, nor the drawing figures.

Claim 35, lines 5 & 7, the phrase “offer speed” (all three occurrences) is not clear. Also, support for such is not apparent from the descriptive portion of the specification, nor the drawing figures.

Claim 36, lines 9 & 11-12, the phrase “offer speed” (two occurrences) is not clear. Also, support for such is not apparent from the descriptive portion of the specification, nor the drawing figures.

Claim 39, lines 6-8, the phrase “offer speed” (all three occurrences) is not clear. Also, support for such is not apparent from the descriptive portion of the specification, nor the drawing figures.

Claim 40, line 8, the phrase “the first predetermined threshold” is not clear. Also, support for such is not apparent from the descriptive portion of the specification, nor the drawing figures.

Claim 40, line 10, the phrase “the second predetermined threshold” is not clear. Also, support for such is not apparent from the descriptive portion of the specification, nor the drawing figures.

8. It is further noted that the present Application contains subject matter that will be subject to a restriction requirement, e.g. process/apparatus, if Applicant is able to clarify the above matters. Specifically, claims 11, 14, 26, 37, 38 and 40 are not similar to the other claims pending. It is strongly suggested that Applicant cancel these claims to streamline prosecution. Claims 26 and 34 are allowable over the prior art of record.

9. Further pertinent references of interest are noted on the attached PTO-892.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Joseph Rudy whose telephone number is 703-308-7808. The examiner can normally be reached on Tuesday thru Friday, 7:30 a.m until 6 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Robert P. Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

